

REMARKS

The present Amendment is in response to the Office Action dated April 8, 2004 in reference to the above-identified application. The Examiner set a shortened statutory period for reply of three (3) months, making the present Amendment originally due by July 8, 2004. Filed concurrently herewith is a request for a three-month extension of time so that the present Amendment is due by October 8, 2004.

In the Office Action, claims 7-12 are rejected under 35 U.S.C §102(b) as being anticipated by Winnicki 4,733,495. Claims 1-12 are rejected under 35 U.S.C. §103(a) as being unpatentable over Winnicki '495 in view of Schuman 3,965,608. The Examiner has additionally objected to the disclosure, as it can now be amended to reference the particulars of the recently issued parent application. At the outset, the Examiner will please note that the specification has been amended accordingly.

Before addressing the claim amendments herein, it may be helpful to briefly summarize the operational steps for actuating the flying insect exterminator taught by the primary reference Winnicki '495. The triggering sequence for these operational steps are perhaps best appreciated with reference to column 4, lines 24-49. The insect capturing sequence is perhaps best described at column 4, line 50 through column 5, line 30. In order to trigger the device, and with reference to Fig. 5, its tube 44 is moved rearwardly and then rotated to effectuate a bayonet engagement between tube 44, sleeve 36 and piston 30. A coil spring 64 is then compressed by pushing cup 80 rearward. This causes the piston 30 to move to a retracted

position (Fig. 2) wherein notch 114 is retained against trigger groove 116. At this point, the exterminator is in a ready position.

To activate the device, it is initially placed near a target insect. Trigger 98 is then pressed and, as notch 114 disengages from groove 116, tube 44 pivots to release pin 42 from its bayonet coupling within slot 40. Being completely unrestrained, piston 30 and tube 44 “fly forward very rapidly” until cup 80 hits the glass backstop where the target insect is situated and surrounds the insect into a receiving chamber 84. At this point, tube 44 is in a fully extended position. Tension on rubber band 56 then causes rotatable movement between sleeve 36 and tube 44 to create a vacuum and discharge air downstream of piston, through holes 58. This results in the target insect being quickly drawn past deflectable fingers 86 into an enclosed area defined by screen 70. At this point, the insect is captured.

Only a perusal of the Winnicki reference is needed to realize that both its triggering and firing sequences are rather involved and necessitate numerous operational steps whereby the device, or portions of it, are moved linearly, rotated, etc. It is also apparent that Winnicki’s exterminator is relatively useless unless the target insect is situated near a backstop that can be struck by the cup 80 as the tubular section thrusts forward to surround the insect. Of course, depending on the structural integrity of the backstop and the components of the exterminator itself, the thrusting motion by which the extermination device of Winnicki operates can be disadvantageous. Winnicki discloses a glass substrate as a backstop, and certainly undesirable effects could occur if Winnick’s device was used with more fragile constructions.

Moreover, unless Winnicki's exterminator is initially positioned to actually strike the backstop, it is ineffective.

Much of the drawbacks associated with the exterminator of Winnicki are resolved by the present invention which does not involve any kind of thrusting motion in order to capture the insect. Thus, the Examiner will see that independent claim 1 has been amended to now recite that the elongated housing has "an effective length" which is maintained during the capturing sequence. This independent claim has also been amended to delete recitations pertaining to the provision of a purge valve. As amended, claim 1 is clearly distinguishable over any fair reading of Winnicki '495, taken either alone or in combination. It can hardly be disputed that the ability to change the effective length of the housing in Winnicki is critical to both the triggering and capturing sequence of the prior art device. It simply would be inoperative otherwise. Accordingly, it is respectfully submitted that independent claim 1 and its dependent claims 2-6 are now in proper condition for allowance.

As to independent claim 7, it has been amended to now recite the provision of a compression chamber at a downstream end portion of the housing which, when compressed into a compressed position, evacuates air through the sidewall to establish the potential vacuum source within the housing interior. Thus, amended claim 7 is similar to original dependent claim 8 written in independent form. As such, claim 8 is now cancelled and claims 9-11 are amended to properly recite dependence now from claim 7.

In paragraph 2 of the Office Action, the Examiner references structure 18 of Winnicki '495 as the claimed compression chamber. Applicant respectfully disagrees. As best appreciated with reference to the extended

and retracted positions of the device (Figs. 2 and 5) it can be seen that chamber 18 does not compress at all. Rather, it is rigid and maintains its configuration throughout. While it houses an internal spring which compresses, the chamber itself does not. Accordingly it is respectfully submitted that the Examiner has misread the teachings of Winnicki '495 as it relates to those claimed features of the present application which recite a compression chamber that can be placed in both compressed and uncompressed positions.

No additional claims fees are believed to be payable upon the Amendment. However, the Commissioner is hereby authorized to charge any deficiency in the required fees, or to credit any overpayment, to deposit account number 13-1940.

Based on the foregoing, Applicant submits that the present application is in complete condition for allowance, and action to that end is courteously solicited. If any issues remain to be resolved prior to the granting of this application, the Examiner is requested to contact the undersigned attorney for the Applicant at the telephone number listed below.

Respectfully submitted,

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CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8

I hereby certify that the foregoing ***AMENDMENT (10 pages)***, and ***Request for a three-month Extension of Time (2 pages) and Check No. 18534 in the amount of \$490.00*** is being deposited with the United States Postal Service as first-class mail in an envelope addressed to Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 12th day of October, 2004.


Christy L. Burbank